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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2010-600**

12 **CLAUDIA G. GILBERT**  
13 **308 Santa Isabel Avenue, Apt. A1**  
14 **Costa Mesa, CA 92627**

**ACCUSATION**

15 **Registered Nurse License No. 581306**

16 Respondent.

17  
18  
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
23 of Consumer Affairs.

24 2. On or about May 24, 2001, the Board of Registered Nursing issued Registered Nurse  
25 License Number 581306 to Claudia G. Gilbert (Respondent). The Registered Nurse License was  
26 in full force and effect at all times relevant to the charges brought herein and will expire on  
27 October 31, 2010, unless renewed.  
28

## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Section 2811(b) of the Code provides that each license not renewed shall expire but may within eight years be reinstated upon payment of fees and submission of proof of the applicant's qualifications as may be required by the Board.

## STATUTORY AND REGULATORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who

holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

9. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

....

10. Title 16, California Code of Regulations, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

11. Title 16, California Code of Regulations, section 1445(b), states:

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

1 (3) The time that has elapsed since commission of the act(s) or offense(s).

2 (4) Whether the licensee has complied with any terms of parole, probation,  
3 restitution or any other sanctions lawfully imposed against the licensee.

4 (5) If applicable, evidence of expungement proceedings pursuant to Section  
5 1203.4 of the Penal Code.

6 (6) Evidence, if any, of rehabilitation submitted by the licensee.

#### 7 COST RECOVERY

8 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
9 administrative law judge to direct a licensee found to have committed a violation or violations of  
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
11 enforcement of the case.

#### 12 FIRST CAUSE FOR DISCIPLINE

##### 13 **(March 26, 2010 Conviction for Lewd Act Upon Child Under 14 in 2007)**

14 13. Respondent is subject to disciplinary action under sections 490 and 2761(f) of the  
15 Code in that Respondent was convicted of a crime that is substantially related to the  
16 qualifications, duties and functions of a nurse. The circumstances are as follows:

17 a. On or about March 26, 2010, in a criminal proceeding entitled *People of the State*  
18 *of California v. Claudia Gilbert*, case number 09HF1012, Respondent was convicted on her plea  
19 of guilty for violating Penal Code section 288(a), committing a lewd and lascivious act upon a  
20 child under the age of fourteen with the intent of arousing, appealing to, and gratifying the lust,  
21 passions and sexual desires of herself and a child, a felony.

22 b. As a result of the conviction, on or about March 26, 2010, Respondent was  
23 sentenced to six months in jail, to five years formal probation, to register as a sex offender for the  
24 rest of her life under Penal Code 290 and to pay \$1080.00 in fees and fines. As a condition of her  
25 probation, Respondent cannot associate with minors unless those minors are in the company of a  
26 responsible adult who is approved by Respondent's probation officer or the court, knows of  
27 Respondent's offense and is willing to monitor Respondent's behavior.

28 c. The facts that led to the conviction are as follows. Respondent's family member,  
John Doe reported to his therapist, a mandated reporter that Respondent had sexually abused him

1 and the police investigated those charges. In her interview with police, Respondent admitted that  
2 on more than one occasion, she had touched and rubbed John Doe's penis, allowed him to touch  
3 her breasts and had him take pictures of her in lingerie for her page on a social networking  
4 internet site. In her plea agreement, Respondent offered the following facts as the basis for her  
5 guilty plea, "on or about and between 1-1-07 and 12-31-07, I willfully, unlawfully and in a lewd  
6 and lascivious manner touched the body of [John Doe] with the intent of arousing the sexual  
7 desires of [John Doe]. At the time this offense occurred, [John Doe] was 10 years old."

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct-Sexual Misconduct with a Minor)**

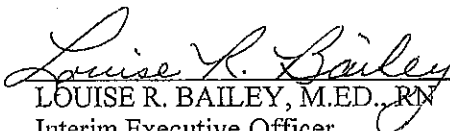
10 14. Respondent is subject to disciplinary action under section 2761(a) of the Code in that  
11 Respondent engaged in sexual misconduct with a child under the age of fourteen as more fully  
12 described in paragraph 13 above.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
15 and that following the hearing, the Board of Registered Nursing issue a decision:

- 16 1. ~~Revoking or suspending Registered Nurse License Number 581306, issued to Claudia~~  
17 ~~G. Gilbert;~~  
18 2. Ordering Claudia G. Gilbert to pay the Board of Registered Nursing the reasonable  
19 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
20 Code section 125.3;  
21 3. Taking such other and further action as deemed necessary and proper.

22  
23  
24 DATED: 5/25/10

  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant